

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Develop  
Additional Methods to Implement the California  
Renewables Portfolio Standard Program

---

Rulemaking 06-02-012  
(Filed February 16, 2006)

**REPLY COMMENTS OF NATURENER USA, LLC ON REVISED PROPOSED  
DECISION ON RULEMAKING TO AUTHORIZE THE PROCUREMENT  
AND USE OF TRADABLE RENEWABLE ENERGY CREDITS**

Steven F. Greenwald  
J. Joshua Davidson  
DAVIS WRIGHT TREMAINE LLP  
505 Montgomery Street, Suite 800  
San Francisco, California 94111-6533  
Tel.: (415) 276-6500  
Fax.: (415) 276-6599  
E-mail: [stevegreenwald@dwt.com](mailto:stevegreenwald@dwt.com)  
  
Attorneys for NaturEner USA LLC

Nancy L. Murray  
General Counsel  
NaturEner USA, LLC  
394 Pacific Avenue  
Suite 300  
San Francisco, CA 94111  
Tel.: (415) 217-5523  
Fax: (415) 217-5599  
Email: [nmurray@naturener.net](mailto:nmurray@naturener.net)

Dated: April 20, 2009

**BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking to Develop  
Additional Methods to Implement the California  
Renewables Portfolio Standard Program

Rulemaking 06-02-012  
(Filed February 16, 2006)

**REPLY COMMENTS OF NATURENER USA, LLC ON REVISED PROPOSED  
DECISION ON RULEMAKING TO AUTHORIZE THE PROCUREMENT  
AND USE OF TRADABLE RENEWABLE ENERGY CREDITS**

Pursuant to Rule 14.3 of the California Public Utilities Commission's ("Commission") Rules of Practice and Procedure, NaturEner USA, LLC ("NaturEner") respectfully submits these Reply Comments on the Revised Proposed Decision on Rulemaking to Authorize the Procurement and Use of Tradable Renewable Energy Credits ("Revised PD").

The Revised PD would allow all "third example" contracts<sup>1</sup> executed before June 1<sup>2</sup> to be classified according to the California Energy Commission's ("CEC") guidelines and this Commission's existing precedent as both RPS-eligible and "bundled" projects. After June 1, the Revised PD, if adopted, would mandate that all RPS-eligible "third example" contracts be reclassified as "TREC-only" ("TREC-only Reclassification").<sup>3</sup>

As part of its opening comments on the Revised PD ("NaturEner Opening Comments"), NaturEner demonstrated that the Revised PD's establishment of a fixed June 1 effective date for the TREC-only Reclassification would engender unnecessary confusion and burden this

---

<sup>1</sup> The CEC *Eligibility Guidebook* provides the following example of a transaction that satisfies RPS delivery requirements and "is not a TREC": "The retail seller could provide firming and shaping services. The retail seller could buy energy and RECs from an RPS-eligible facility, sell the energy back to the facility, and "match" the RECs with energy delivery into California from a second PPA and/or with imports under a pre-existing PPA." CEC *Eligibility Guidebook* at 23, footnote 2.

<sup>2</sup> The Revised PD contains an internal inconsistency in that the body of the decision references a June 1 effective date while Ordering Paragraph 17 contemplates an April 1 effective date. This is an obvious clerical error, and NaturEner assumes that a June 1 effective date was intended.

<sup>3</sup> NaturEner's primary and consistent recommendation is that the Commission reject in its entirety the TREC-only Reclassification erroneously proposed by the Revised PD. To the extent that the Commission adopts NaturEner's primary recommendation and rejects the TREC-only Reclassification, the issues raised in these Reply Comments are no longer germane.

Commission and market participants. NaturEner accordingly proposed that in the event the Commission were to adopt the TREC-only Reclassification, the Commission should “[r]eplace all references to a specific effective date of the TREC-only Reclassification with an effective date of 90 days from the date of issuance of a final decision in this phase of the proceeding.”<sup>4</sup>

The NaturEner Opening Comments justified this modification on the basis that given the high level of party participation and the already extended period of time for decision in these proceedings, it is unlikely that the Commission will issue a decision on the rules governing the use of TRECs for RPS compliance purposes prior to June 1. Accordingly, the establishment of a fixed effective date could serve to deny developers, utilities, and other RPS market participants any reasonable transition period in which to adjust to the new TREC market rules. These reasons justify setting a “tolled” effective date for the TREC-only Reclassification as 90 days from the date of issuance of a final decision on relevant TREC issues.

Moreover, an event following the filing of the NaturEner Opening Comments underscores the need for this modification of the effective date for the TREC-only Reclassification and warrants the filing of these reply comments. On April 16, the Commission issued an order extending the deadline for resolution of the present proceeding under Public Utilities Code Section 1701.5<sup>5</sup> to June 29, 2009.<sup>6</sup> This decision represents the Commission’s fifth extension of the completion deadline for the present proceeding.<sup>7</sup>

---

<sup>4</sup> NaturEner Opening Comments at 15.

<sup>5</sup> Pub. Util. Code Section 1701.5 provides that in ratesetting proceedings the Commission “shall resolve the issues raised in the scoping memo within 18 months of the date the scoping memo was issued, unless the [C]ommission makes a written determination that the deadline cannot be met, including findings as to the reason, and issues an order extending the deadline.” Additionally, “[n]o single order may extend the deadline for more than 60 days.”

<sup>6</sup> D.09-04-015.

<sup>7</sup> An initial scoping memo set a completion date of April 2008. Scoping Memo and Ruling of Assigned Commissioner (Apr. 28, 2006). A subsequent scoping memo extended the procedural schedule and set a completion date of December 2008. Second Amended Scoping Memo and Ruling of Assigned Commissioner (Feb. 25, 2008). Decision 08-12-048 then extended the deadline to March 1, 2009, and the deadline was further extended to April 30, 2009 by Decision 09-02-014. Finally, Decision 09-04-015 issued on April 16, 2009 extends the deadline for

This yet additional extension of the completion deadline offers further compelling evidence to support NaturEner's proposal to eliminate any fixed effective date for the TREC-only Reclassification. The need for the Commission to take more time for assessment and consideration also demonstrates the practicability of establishing an effective date that is "tolled" from the date of issuance of a final decision.

For each of the reasons set forth above and in the NaturEner Opening Comments, NaturEner USA, LLC respectfully requests that the Commission grant the relief requested in Section II of its Opening Comments and, in particular and in all events, set the effective date for the TREC-only Reclassification as 90 days from the issuance of a final decision adopting the TREC-only Reclassification.

Respectfully submitted,

/s/ Steven F. Greenwald  
Steven F. Greenwald  
J. Joshua Davidson  
DAVIS WRIGHT TREMAINE LLP  
505 Montgomery Street, Suite 800  
San Francisco, California 94111-6533  
Tel.: (415) 276-6500  
Fax.: (415) 276-6599  
E-mail: [stevegreenwald@dwtd.com](mailto:stevegreenwald@dwtd.com)

Attorneys for NaturEner USA, LLC

Dated: April 20, 2009

---

completion to June 29, 2009, explaining that "[c]omments on the new PD and Commission consideration of the new PD are unlikely to be completed prior to the current April 30, 2009 deadline for concluding this proceeding."

**CERTIFICATE OF SERVICE**

I, Judy Pau, certify:

I am employed in the City and County of San Francisco, California, am over eighteen years of age and am not a party to the within entitled cause. My business address is 505 Montgomery Street, Suite 800, San Francisco, California 94111-6533.

On April 20, 2009, I caused the following to be served:

**REPLY COMMENTS OF NATURENER USA, LLC ON REVISED PROPOSED  
DECISION ON RULEMAKING TO AUTHORIZE THE PROCUREMENT  
AND USE OF TRADABLE RENEWABLE ENERGY CREDITS**

via electronic mail to all parties on the service list R.06-02-012 who have provided the Commission with an electronic mail address and by First class mail on the parties listed as “Parties” and “State Service” on the attached service list who have not provided an electronic mail address.

\_\_\_\_\_  
/s/  
Judy Pau

**VIA EMAIL AND US MAIL**

Commissioner Michael R. Peevey  
ALJ Ann E. Simon  
ALJ Burton Mattson